

1 CABINET FOR HEALTH AND FAMILY SERVICES

2 Department for Medicaid Services

3 Division of Kentucky Children's Health Insurance Program

4 (Amendment)

5 907 KAR 1:715. School-based health services.

6 RELATES TO: KRS 156.070, 205.520, 605.115, 20 U.S.C. 33

7 STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3),
8 205.560[, ~~EO 2004-726~~]

9 NECESSITY, FUNCTION, AND CONFORMITY: [~~EO 2004-726, effective July 9,~~
10 ~~2004, reorganized the Cabinet for Health Services and placed the Department for~~
11 ~~Medicaid Services and the Medicaid Program under the Cabinet for Health and Family~~
12 ~~Services.~~] The Cabinet for Health and Family Services, Department for Medicaid
13 Services has responsibility to administer the Medicaid Program. KRS 205.520(3)
14 authorizes the cabinet, by administrative regulation, to comply with any requirement that
15 may be imposed or opportunity presented by federal law for the provision of Medicaid
16 services to Kentucky's indigent citizenry. This administrative regulation establishes the
17 provisions relating to school-based health services (SBHS) for which payment shall be
18 made by the Medicaid Program on behalf of Medicaid recipients who are eligible for
19 school-based health services under the Individuals with Disabilities Education Act (20
20 U.S.C. 33).

21 Section 1. Definitions.

1 (1) "Admissions and release committee" or "ARC" means a group of individuals
2 required by 707 KAR 1:320 and 34 C.F.R. 300.344 who are responsible for developing,
3 reviewing, and, as necessary, revising the individualized education program for a child
4 with a disability.

5 (2) "Assistive technology device" means an item, piece of equipment, or product
6 system that is:

7 (a) Used to increase, maintain, or improve the functional capabilities of a child with
8 a disability; and

9 (b) Medically necessary to implement the health services in the child's
10 individualized education program.

11 (3) "Collateral services" means instruction and consultation to a child, the child's
12 family, teacher, or another service provider which is necessary to communicate and
13 enhance the effectiveness of the child's treatment and management programs.

14 (4) "Department of Education" means the Commonwealth of Kentucky, Department
15 of Education.

16 (5) "IDEA" means the Individuals with Disabilities Education Act, 20 U.S.C. Chapter
17 33.

18 (6) [(5)] "Incidental interpreter services" means those interpreter services that are
19 necessary to allow the child to benefit from other covered school-based health services.

20 (7) [(6)] "Individualized Education Program" or "IEP" means a written plan for a
21 child with a disability that is developed, reviewed and revised in accordance with 707 KAR
22 1:320.

23 (8) [(7)] "Recipient" means a Medicaid-eligible child under the age of twenty-one

(21), including the entire month in which the child becomes twenty-one (21).

(9) ~~[(8)]~~ "School-based health services" or "SBHS" means medically-necessary health services provided for in 907 KAR 1:034 and as specified in an individualized education program for a child determined to be eligible under the provisions of the Individuals with Disabilities Education Act, 20 U.S.C. Chapter 33, and 707 KAR Chapter 1.

Section 2. Provider Requirements.

(1) A school district that requests to participate as a school-based health care provider shall be certified by the Department of Education.

(2) The Department of Education may grant certification to a district that agrees to:

(a) Provide services as required by IDEA, 20 U.S.C. 33, and as specified in an approved individualized education program developed by an ARC that includes a multidisciplinary team of professionals acting within their scope of practice;

(b) Comply with the requirements for provision of services required by IDEA as outlined in 707 KAR 1:320;

(c) Employ or contract with health care professionals who meet the qualifications specified in Section 4 of this administrative regulation;

(d) Provide the Department of Education with a proposed quality assurance outline;

(e) Maintain and submit to the Department of Education all required records and reports to ensure compliance with 20 U.S.C. 33; and

(f) Provide the Department of Education with a list of school-based health services that the school district provides. This list shall contain the following information for employees and contractors providing the services:

- 1 1. Name;
- 2 2. Credentials;
- 3 3. Salary;
- 4 4. Fringe benefit percentages; and
- 5 5. Contract amounts.

6 (3) The Department for Medicaid services may grant Medicaid enrollment to a
7 provider who:

- 8 (a) Meets the criteria in subsection (2) of this section; and
- 9 (b) Is recommended by the Department of Education for certification and
10 enrollment in the Kentucky Medicaid Program as a provider of school-based health
11 services.

12 (4) A Medicaid school-based provider shall:

- 13 (a) Submit to an annual review by the Department of Education to ensure
14 compliance with the standards for continued participation as a Medicaid provider;
- 15 (b) Have an on-site survey completed by the Department of Education as
16 necessary to determine compliance with the Medicaid Program;
- 17 (c) Take action as specified by the Department of Education to correct a deficiency
18 if found to be in noncompliance with the provision of services outlined in 707 KAR 1:320
19 or this administrative regulation;
- 20 (d) Agree to implement a quality assurance program approved by the Department
21 of Education for the provision of Medicaid-covered services within one (1) year from the
22 date the Department of Education recommends enrollment to the Medicaid Program;
- 23 (e) Maintain a current list of school-based health services that the school district

1 provides. The list shall contain the information listed in subsection (2)(f) of this section for
2 an employee or contractor providing the services; and

3 (f) Maintain records on each Medicaid-eligible recipient who receives services
4 reimbursed by Medicaid. These records shall:

5 1. Identify the child, services performed, and quantity or units of service;

6 2. Be signed and dated by the professional who provided or supervised the
7 service;

8 3. Be legible with statements written in an objective manner;

9 4. Indicate progress being made, any change in treatment, and response to the
10 treatment; and

11 5. Be maintained for a minimum of five (5) years plus any additional time required
12 by law.

13 Section 3. Covered Services.

14 (1) A school-based health service that is included in an authorized IEP and
15 provided in accordance with this administrative regulation shall be considered medically
16 necessary and shall not be subject to additional Medicaid prior-authorization
17 requirements.

18 (2) The following services shall be covered if provided to address a medical or
19 mental disability and assist the individual in benefiting from special education
20 programming which is included, authorized, and provided in accordance with the
21 individualized education program:

22 (a) Nursing;

23 (b) Audiology;

1 (c) Speech and language;

2 (d) Occupational therapy;

3 (e) Physical therapy;

4 (f) Mental health;

5 (g) Incidental interpreter services provided in conjunction with another covered
6 service;

7 (h) Orientation and mobility services;

8 (i) Respiratory therapy;

9 (j) Assistive technology devices and appropriate related evaluations if the devices
10 purchased by the Medicaid Program become the property of the recipient; and

11 (k) Transportation with the following limitations:

12 1. A transportation service shall be limited to transporting a recipient to receive a
13 Medicaid-covered service at:

14 a. A site other than the school building in which the child is enrolled for general
15 education purposes; ~~or~~

16 b. The child's home if the child is a home-bound student and receives general
17 education services at home; or

18 c. The school building where the child receives the Medicaid-covered service.
19 Transportation to the school building from the child's home or other site and return
20 transportation from the school building to the child's home or other site shall be covered
21 for the day the Medicaid-covered service is provided at the school building.

22 2. A transportation service shall be provided using a type of vehicle which:

23 a. Meets the specifications established by KRS 156.153, 702 KAR 5:060, and 702

KAR 5:130; and

b. Is appropriate for the child's disability; and

3. A transportation service shall not be covered for transportation[:

~~a. To and from home and the school; or~~

~~b.]~~ Provided by a member of the recipient's household if that person is not an employee of the school district.

(3) A covered service:

(a) Shall not be limited by site of service;

(b) May be provided in:

1. A group of no more than six (6); or

2. In a one-on-one situation; and

(c) May include assessment, evaluation, treatment, and collateral components.

(4) An assessment or evaluation conducted prior to the establishment of an individualized education program shall be covered if the individualized education program is subsequently developed and implemented.

Section 4. Staffing Requirements. School-based health services shall be reimbursable if provided by a professional acting within his scope of practice as defined by state law and as provided in this section.

(1) A nursing service shall be provided by:

(a) An advanced registered nurse practitioner with a current license from the Kentucky Board of Nursing;

(b) A registered nurse with a current license from the Kentucky Board of Nursing;

(c) A licensed practical nurse with a current license issued by the Kentucky Board

1 of Nursing, under appropriate supervision and delegated authority; or

2 (d) A health aide if:

3 1. The aide is under the supervision of a specific registered nurse or advanced
4 registered nurse practitioner;

5 2. The supervising registered nurse or advanced registered nurse practitioner
6 has trained the aide for the specific nursing service for the specific recipient; and

7 3. The supervising registered nurse or advanced registered nurse practitioner
8 has verified in writing that the aide has appropriate training and skills to perform the
9 specific service in a safe, effective manner.

10 (2) Audiology services shall be provided by an audiologist with a current license
11 from the Kentucky Board of Speech-Language Pathology and Audiology.

12 (3) Speech and language services shall be provided by:

13 (a) A speech-language pathologist with:

14 1. A current license from the Kentucky Board of Speech-Language Pathology
15 and Audiology; or

16 2. A masters-level certification issued by the Kentucky Education Professional
17 Standards Board; or

18 (b) A speech-language pathology assistant who:

19 1. Has:

20 a. A current license from the Kentucky Board of Speech-Language Pathology and
21 Audiology; or

22 b. A baccalaureate-level certification issued by the Kentucky Educational
23 Professional Standards Board; and

1 2. Is under the supervision of a licensed or certified masters-level speech-language
2 pathologist in accordance with KRS 334A.033, 334A.080 and 161.053.

3 (4) Occupational therapy services shall be provided by:

4 (a) An occupational therapist with a current license from the Kentucky Board of
5 Licensure for Occupational Therapy;

6 (b) An occupational therapy assistant who is:

7 1. Licensed by the Kentucky Board of Licensure for Occupational Therapy to assist
8 in the practice of occupational therapy; and

9 2. Under the supervision of an occupational therapist; or

10 (c) An unlicensed occupational therapy aide who:

11 1. Provides supportive services to occupational therapists and occupational
12 therapy assistants; and

13 2. Is under the direct supervision of a licensed occupational therapist.

14 (5) Physical therapy services shall be provided by:

15 (a) A physical therapist with a current license from the state Board of Physical
16 Therapy;

17 (b) A physical therapist assistant with a current license from the state Board of
18 Physical Therapy under the supervision of a licensed physical therapist;

19 (c) A physical therapist with a temporary permit issued by the state Board of
20 Physical Therapy under the supervision of a licensed physical therapist;

21 (d) A student of physical therapy under the supervision of a licensed physical
22 therapist; or

23 (e) A physical therapy aide under the direct on-site supervision of a:

1 1. Licensed physical therapist; or
2 2. Licensed physical therapist assistant in accordance with the provisions of 201
3 KAR 22:053, Section 5.

4 (6) Mental health services shall be provided by:

5 (a) An individual currently licensed by the Kentucky Board of Examiners of
6 Psychology in accordance with KRS Chapter 319 as a:

- 7 1. Licensed psychologist;
8 2. Licensed psychological practitioner;
9 3. Certified psychologist with autonomous functioning;
10 4. Certified psychologist; or
11 5. Licensed psychological associate;

12 (b) A school psychologist currently certified by the Kentucky Education
13 Professional Standards Board;

14 (c) A school social worker currently certified by the Kentucky Education
15 Professional Standards Board;

16 (d) A licensed clinical social worker currently licensed by the Kentucky Board of
17 Social Work;

18 (e) A licensed social worker currently licensed by the Kentucky Board of Social
19 Work;

20 (f) A certified social worker currently licensed by the Kentucky Board of Social
21 Work;

22 (g) A guidance counselor currently certified by the Kentucky Education
23 Professional Standards Board;

1 (h) A psychometrist currently certified by the Kentucky Education Professional
2 Standards Board; or

3 (i) An advanced registered nurse practitioner who has a specialty area in
4 accordance with the American Nurses' Association Statement on Psychiatric Mental
5 Health Clinical Nursing Practice and Standards of Psychiatric Mental Health Clinical
6 Nursing Practice in accordance with 201 KAR 20:057;

7 (7) In order to provide an incidental interpreter service, an interpreter ~~[Incidental~~
8 ~~interpreter services shall be provided in accordance with the following:~~

9 ~~(a) Effective July 1, 2003, interpreters]~~ shall be licensed by the Kentucky Board of
10 Interpreters for the Deaf and Hard of Hearing as required by KRS 309.300 to 309.319[;

11 ~~(b) Minimum qualifications after 1996 and before July 1, 2003 shall be as follows:~~

12 ~~1. Sign language interpreters shall:~~

13 ~~a. Be certified by the Registry of Interpreters for the Deaf or other national~~
14 ~~certifying body; or~~

15 ~~b. Hold the intermediate level of the Kentucky Interpreting Skills Screening;~~

16 ~~2. Cued speech interpreters shall demonstrate ability to perform at Level 2 of the~~
17 ~~National Cued Speech Association's certification examination; and~~

18 ~~3. Oral interpreters shall be certified by the Registry of Interpreters for the Deaf.]~~

19 (8) Orientation and mobility services shall be provided by an orientation and
20 mobility specialist certified by the:

21 (a) Academy for Certification of Vision Rehabilitation and Education Professionals
22 (ACVREP); or

23 (b) National Blindness Professional Certification Board (NBPCB).

1 (9) Respiratory therapy services shall be provided by a practitioner certified by the
2 Kentucky Board of Respiratory Care as required by KRS 314A.

3 Section 5. Reimbursement.

4 (1) Reimbursement for SBHS shall be provided in accordance with 907 KAR
5 1:035, Section 5 [6].

6 (2) School-based health services providers shall certify expenditure of state or
7 local funds to provide covered school-based health services to Medicaid-eligible
8 children as specified in 702 KAR 3:285.

907 KAR 1:715

Date

Shannon Turner, J.D., Commissioner
Department for Medicaid Services

Date

Mike Burnside
Undersecretary for Administrative and Fiscal Affairs

APPROVED:

Date

Mark D. Birdwhistell, Secretary
Cabinet for Health and Family Services

A public hearing on this administrative regulation shall, if requested, be held on March 21, 2006, at 9:00 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by March 14, 2006, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business March 31, 2006. Please send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, KY 40601, Phone: 502-564-7905, Fax: 502-564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation #: 907 KAR 1:715
Cabinet for Health and Family Services
Department for Medicaid Services
Agency Contact Person: Stuart Owen 502-564-6204

- (1) Provide a brief summary of:
 - (a) What this administrative regulation does: This administrative regulation establishes Medicaid coverage provisions for school-based health services.
 - (b) The necessity of this administrative regulation: This administrative regulation enables the Department for Medicaid Services (DMS) to cover school-based health services for Medicaid eligible children.
 - (c) How this administrative regulation conforms to the content of the authorizing statutes: KRS194A.030(2), 194A.050(1), 205.520(3), 205.560, and 605.115 authorize DMS to cover school-based health services for Medicaid eligible children.
 - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes Medicaid coverage provisions for school-based health services to Medicaid eligible children.
- (2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
 - (a) How the amendment will change this existing administrative regulation: This amendment expands Medicaid transportation coverage to include transportation to and from a child's school building.
 - (b) The necessity of the amendment to this administrative regulation: This amendment is necessary to enhance and ensure recipient access to school-based health services.
 - (c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the authorizing statutes by expanding Medicaid transportation coverage for children receiving school-based health services; thus, enhancing recipient access to the services.
 - (d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by expanding Medicaid transportation coverage for children receiving school-based health services; thus, enhancing recipient access to the services.
- (3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Approximately 96 school districts and 10,300 school-aged children who are Medicaid recipients will be affected by the amendments to this administrative regulation.

- (4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: This amendment will enhance recipient access to school-based health services by expanding Medicaid's transportation coverage to include transportation to and from a child's school building.
- (5) Provide an estimate of how much it will cost to implement this administrative regulation:
- (a) Initially: School-based health services are provided to Medicaid eligible recipients under a contract with the Kentucky Department of Education (KDE) under a Memorandum of Understanding (MS 02-03-6399). Under the terms of this agreement, KDE will provide the state match to DMS for submitted and reimbursed claims. The terms of this agreement also make this program operational contingent upon funding being available. So, even though this regulation is an expansion of services for this program, there will be no impact on the DMS budget as a result of these changes.
 - (b) On a continuing basis: School-based health services are provided to Medicaid eligible recipients under a contract with the Kentucky Department of Education (KDE) under a Memorandum of Understanding (MS 02-03-6399). Under the terms of this agreement, KDE will provide the state match to DMS for submitted and reimbursed claims. The terms of this agreement also make this program operational contingent upon funding being available. So, even though this regulation is an expansion of services for this program, there will be no impact on the DMS budget as a result of these changes.
- (6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementing and enforcing this administrative regulation will be federal funds authorized under Title XIX of the Social Security Act, and state revenues provided by the Department for Education.
- (7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be necessary to implement the amendment to this administrative regulation.
- (8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendment to this administrative regulation does not establish fees or increase any fees.
- (9) Tiering: Is tiering applied? (Explain why tiering was or was not used)

Tiering was not appropriate in this administrative regulation because the

administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The “equal protection” and “due process” clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.